

STATE OF MICHIGAN  
COURT OF APPEALS

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JOSEFINA RODRIGUEZ,

Plaintiff-Appellant,

v

FARMERS INSURANCE EXCHANGE, and  
SAFECO INSURANCE CO.,

Defendants-Appellees.

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UNPUBLISHED

January 26, 2006

No. 262443

Van Buren Circuit Court

LC No. 01-048134-CK

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SAFECO INSURANCE CO.,

Plaintiff/Counter-Defendant-  
Appellee,

v

JOSEFINA RODRIGUEZ,

Defendant-Appellant,

and

FARMERS INSURANCE EXCHANGE,

Defendant/Counter-Plaintiff-Third-  
Party-Appellee.

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No. 262444

Van Buren Circuit Court

LC No. 01-048128-CK

Before: Bandstra, P.J., and Neff and Markey, JJ.

BANDSTRA, P.J. (*concurring in part and dissenting in part*).

I concur with the majority in its conclusion that summary disposition was properly granted to Safeco but dissent from its conclusion that the trial court erred in granting summary disposition in favor of Farmers.

The majority overlooks what is clearly special statutory treatment for situations involving priority disputes between insurers, in contrast to other situations where an assigned claims

insurer may be liable for PIP benefits. The opening section of the statute assigning liability to assigned claims insurers lists a variety of situations where assigned claims insurers may be liable. MCL 500.3172(1). However, the only situation where this statute requires that an assigned claims insurer must “immediately” pay PIP benefits is where there is a priority dispute between insurers as to their relative obligation to provide coverage. MCL 500.3172(3)(b). As the majority recognizes, plaintiff is incorrect in arguing that this case involved a priority dispute. Thus, subsection (3)’s “immediate” payment requirement does not apply. The majority’s conclusion that, nonetheless, Farmers had to make immediate payment renders most of subsection (3) nugatory.<sup>1</sup>

Farmers failure to immediately make payment to plaintiff here resulted from its prompt investigation of her claim and its conclusion that another insurer, Safeco, had issued a policy covering the accident. That conclusion was reasonable, arising from the fact that plaintiff’s sister lived at the same mailing address as plaintiff, which suggested that plaintiff was covered as a “resident relative” under her sister’s Safeco policy. In *Belcher v Aetna Casualty & Surety Co*, 409 Mich 231, 251; 293 NW2d 594 (1980), our Supreme Court reasoned that “before recovery of benefits may be obtained through an assigned claims plan, it must be determined that no personal protection insurance is ‘applicable to the injury,’” construing the same statutory language that currently applies under MCL 500.3172(1). Having complied with the statute as it was construed in *Belcher*, Farmers did not “unreasonably delay[] in making prompt payment” to plaintiff on her claim and she is not entitled to attorney fees. MCL 500.3148(1).

For the same reason, Farmers was not “overdue” in making payments under the penalty interest provision of MCL 500.3142(2). Considering the analysis above, that section’s reference to “an insurer (which) receives reasonable proof of the fact” of a loss does not include an assigned claims insurer which has never issued any policy to the person suffering a loss and which reasonably believes that another insurer has issued a policy covering the loss. Further, Farmers made payment to plaintiff within 30 days of receiving notice that Safeco was denying plaintiff’s claim, meaning that Farmers’ payment to her was not “overdue” even if MCL 500.3142(2) applied. Finally, interest may be imposed against an insurer that in good faith fails to promptly pay benefits under this section only if that insurer is “later determined to be liable” on a claim. *Davis v Citizens Ins Co of America*, 195 Mich App 323, 328; 489 NW2d 214 (1992). Here, Farmers was later determined not to be liable to plaintiff for insurance benefits.

I would affirm the order granting summary disposition to both Safeco and Farmers.

/s/ Richard A. Bandstra

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<sup>1</sup> The majority does so primarily by relying on *Spencer v Citizens Ins Co*, 239 Mich App 291; 608 NW2d 113 (2000), a case that did not consider in any manner the questions presented here, i.e., the timeliness of the assigned claims insurer’s payment of benefits and the propriety of awarding penalty interest or attorney fees for late payment.